

BILL NUMBER 2067

ORDINANCE NUMBER 2009

AN ORDINANCE GRANTING TO NEXTLINK MISSOURI, INC. A LICENSE TO CONSTRUCT, OPERATE, MAINTAIN AND REPLACE UNDERGROUND COMMUNICATION TRANSMISSION LINES IN AND UNDER PUBLIC ROADS, RIGHTS-OF-WAY AND EASEMENTS IN THE CITY OF CREVE COEUR, MISSOURI; PROVIDING FOR THE REGULATION OF THE LICENSE SO GRANTED AND PROVIDING FOR COMPENSATION TO THE CITY OF CREVE COEUR FOR THE GRANT HEREOF.

WHEREAS, NextLink Missouri, Inc. has applied for a license to construct, operate, maintain and replace communication transmission lines in public roads, rights-of-way and easements in the City of Creve Coeur, and

WHEREAS, the City has invested and will continue to invest substantial public monies in the acquisition, construction and maintenance of such roads, rights-of-way and easements, all of which are valuable public assets, and

WHEREAS, use of such public assets by NextLink for public service and private gain will increase the maintenance and management costs of the City and limit the availability of such assets for others, and

WHEREAS, Section 253 of the Telecommunications Act of 1996 expressly recognizes the continuing authority of local government to manage the public rights-of-way and to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a non-discriminatory basis provided such compensation is publicly disclosed, and

WHEREAS, the City has determined that it is in the public interest to grant NextLink's application subject to conditions, including the payment of fair and reasonable compensation, the adherence to reasonable and appropriate regulations, and the placement of such lines underground all as permitted by applicable law, and

WHEREAS, the City and NextLink have reached agreement on these matters.

NOW, THEREFORE, be it ordained by the City of Creve Coeur, St. Louis County, Missouri, as follows:

SECTION 6. ACCEPTANCE. This Ordinance shall be void and of no effect unless and until Licensee shall have filed with the City Clerk its written unconditional acceptance of this Ordinance and its terms signed by an authorized officer of the Licensee together with the performance bond required by Section 12 herein. The acceptance shall be in such form as required by the City Attorney. By accepting this License, Licensee acknowledges and accepts the City's legal right to grant the License, and to enact and enforce ordinances and regulations related to the License, accepts and agrees to comply with each provision of this License, agrees that the License was granted pursuant to processes and procedures consistent with applicable law, agrees that the License is fully enforceable under applicable law, and agrees it will not raise any claim to the contrary.

SECTION 7. ASSIGNMENT. Neither this License nor any right or privilege under this Ordinance may be conveyed, assigned, pledged or hypothecated without prior written consent of the City, which consent shall not be unreasonably withheld or unduly delayed. However, with written notice to the City, Licensee may assign or transfer this License to a subsidiary or affiliate company without prior written consent of the City.

SECTION 8. LICENSE PAYMENTS TO CITY OF CREVE COEUR. In addition to all other fees, taxes and permits required by this Ordinance or other applicable City ordinances including Ordinance No. 1051 Relating to the License or Occupational Tax on Telephone Service as may be amended from time to time, Licensee shall make quarterly payments to the City of an amount that is the greater of (a) \$500.00 annually or (b) the total of four and one-half percent (4.5%) of the gross revenue derived from all Licensee's retail services (other than those services that are subject to the tax imposed by Ordinance No. 1051 as amended) that either (i) originate and terminate end user to end user within the City or (ii) either (x) originate within the City and terminate within the Greater St. Louis Area or (y) terminate within the City and originate within the Greater St. Louis Area (provided, the portion of gross revenue included under part (ii) shall first be multiplied by the ratio of total end-to-end mileage of public rights-of-way occupied by the Licensee within the City to the total end-to-end mileage of public rights-of-way occupied by the Licensee within the Greater St. Louis Area as of January 1 of each year).

For purposes of this section and as used in Licenses granted previously to other companies, the "Greater St. Louis Area" means the St. Louis Metropolitan Calling Area (all tiers) as established by the Missouri Public Service Commission on December 23, 1992 (2 MOPSC 3d 1) and as depicted on the map attached hereto as Exhibit A. Service shall be defined as the provision or offering of special access or private line telecommunications services by Licensee (either directly or as a carrier for others) to persons by means of this system, or other services authorized to Licensee by the Public Service Commission. Any payments made by the Licensee under the City's license tax on telephone service pursuant to Ordinance 1051 shall be allowed as a credit against any compensation due hereunder. In no event shall the services upon which gross revenues are calculated hereunder be included as services upon which gross receipts are calculated under Ordinance 1051. Licensee shall make each quarterly payment within 30 days of the end of the calendar quarter and shall submit with each payment a sworn statement showing the calculation of the amount due including the derivation of the applicable gross revenues and also listing any and all companies using Licensee's Facilities to provide retail or wholesale services. Such statements shall be in a form approved by the City Administrator.

SECTION 9. SAFETY REQUIREMENTS.

(1) The Licensee shall at all times employ the highest degree of care and shall use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public; and shall at all times comply with the National Electrical Safety Code and all other applicable ordinances, statutes, regulations, and laws in effect by the applicable jurisdiction.

(2) Licensee shall install and maintain its pipes, fixtures, cables and other equipment in accordance with the requirements of the Department of Public Works and such other applicable ordinances and regulations of the City of Creve Coeur affecting such installations as may be presently in effect or changed by future ordinances, in such manner that they will not interfere with any installation of the City or of a public utility or cable television company or open video system provider serving the City.

registered or certified mail, postage fully prepaid, or by overnight commercial air courier (such as Federal Express) as follows:

If for Licensee: NEXTLINK Missouri, Inc.
2020 Westport Center Drive
Maryland Heights, Missouri 63146
Attn: Manager, Regulatory and External Affairs

All invoices shall be sent to "Accounts Payable" at the above address.

If for the City: City Administrator
City of Creve Coeur
300 N. New Ballas Road
Creve Coeur, MO 63141

SECTION 17. GOVERNING LAW. This Ordinance and the rights and obligations of the Parties hereunder shall for all purposes be governed by, and shall be construed in accordance with, the laws of the State of Missouri, without regard to principles of conflicts of law.

SECTION 18. FORCE MAJEURE. Neither Party hereto shall be liable for, and shall be excused from any failure to deliver or perform or for delay in delivery or performance due to causes beyond its reasonable control, including, but not limited to, natural disasters, actions of other governmental authorities other than, or under control of the City, floods, fires, wars or civil disturbance, transportation or telecommunications problems not caused or contributed to by the other Party, or any act of God. The foregoing shall not apply to normal, usual and non-catastrophic weather conditions experienced in the Creve Coeur area.

SECTION 19. MFN.

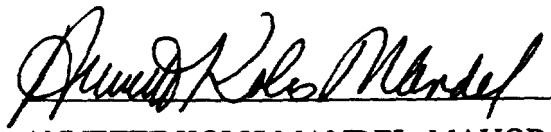
(1) In the event that Licensee is granted rights to place fiber optic cable in and under public roads, rights-of-way and easements of another municipality within St. Louis County or unincorporated portions of St. Louis County pursuant to compensation terms which would, if applied to the City of Creve Coeur, result in Licensee paying more total annual compensation than the compensation to be paid by Licensee pursuant to Section 8 of this License, the City shall have the option to replace the compensation terms stated in

Section 8 of this License with the compensation terms applicable to Licensee in that other license. Upon request from the City, NEXTLINK shall submit any license agreement with another municipality within St. Louis County or with St. Louis County itself. The City shall notify Licensee in writing of the City's election to accept such substitute compensation terms. This provision does not apply to any agreement between Licensee and the City of St. Louis, Missouri.

(2) In the event that another person or company engaged in the business of providing telecommunications services by way of fiber optic cables or other high capacity transmission media to more than one (1) user for wholesale or retail purposes with the objective of generating revenue is hereafter granted rights to place cables in and under public roads, rights of way and easements in the City pursuant to compensation terms imposing lesser obligations on the Grantee thereof than are imposed by the provisions of this Ordinance, Licensee shall have the option to avail itself of the compensation terms applicable to such other person or company as herein referenced. Licensee shall notify the City in writing of Licensee's election to avail itself of such substitute compensation terms.

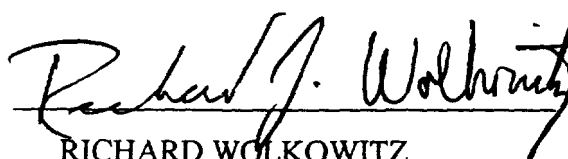
SECTION 20. EFFECTIVE DATE. This Ordinance shall take effect fifteen (15) days from its adoption by the City Council and execution by the Mayor.

APPROVED THIS 12 DAY OF July, 1999.



ANNETTE KOLIS MANDEL, MAYOR

PASSED THIS 12 DAY OF July, 1999.



RICHARD WOLKOWITZ
CITY COUNCIL PRESIDENT



2/6/2001

ORDINANCE NO. _____

AN ORDINANCE regulating the occupancy and use of public rights-of-way by telecommunications systems, cable systems, and private communication systems, regulating cable systems and providing cable customer service standards; establishing franchise and licensing requirements for operators of such systems and certain resellers; and prescribing minimum charges, terms, and conditions for and upon the construction, maintenance, and repair of such systems; amending the Fife Municipal Code by adding a new title thereto, to be known as Title 11, Telecommunication Systems, Cable Systems, and Private Communication Systems, consisting of seven chapters;

WHEREAS it is anticipated that an ever-increasing number of telecommunication carriers and providers will request access to and use of public rights-of-way for provision of telecommunications service to the public, and

WHEREAS, under applicable laws, the City of Fife has the authority to regulate the use of streets, public rights-of-way, and other municipal property, and to grant access thereto upon certain terms and conditions, and

WHEREAS, the public rights-of-way within the City:

(1) are critical to the travel of persons and the transport of goods and other tangibles in the business and social life of the community by all citizens; are used by the City to provide critical services to its citizens, including electric services, services to protect public safety, and water and other public utilities; and are used by the City to provide communications and other services to itself and other government agencies;

(2) can be partially occupied by private utilities and other public service entities for facilities used in the delivery, conveyance, and transmission of utility and public services rendered for profit, to the enhancement of the health, welfare, and general economic well-being of the City and its citizens; and

(3) are a unique and physically limited resource so that proper management by the City is necessary to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses, to protect against foreclosure of future economic expansion because of premature exhaustion of the Public Rights-of-Way as an economic resource, and to minimize the inconvenience to and negative effects upon the public from such facilities' construction, emplacement, relocation, and maintenance in the rights-of-way; and

(4) are intended for public uses and must be managed and controlled consistent with that intent, and

WHEREAS the City wishes to promote availability of high-quality and diverse telecommunications services to City residents, businesses, the City, and other public institutions; to promote the availability of diverse information resources to the community, including through the development of advanced telecommunications systems that can support public, educational, and governmental programming and high-

BE IT ORDAINED BY THE CITY OF FIFE:

Section 1. That the Fife Municipal Code is hereby amended by adding thereto a new title, to be known as Title 11, "Telecommunication Systems, Cable Systems, and Private Communication Systems," consisting of six new chapters, to read as follows:

Title 11
TELECOMMUNICATION SYSTEMS, CABLE SYSTEMS,
AND PRIVATE COMMUNICATION SYSTEMS

Chapters:

11.01 General

- 11.01.1 Purpose.
- 11.01.2 Policy Guidelines.
- 11.01.3 Definitions.
- 11.01.4 Franchise required.
- 11.01.5 Cost Recovery.
- 11.01.6 General conditions upon use of public rights-of-way.
- 11.01.7 Protection of the City and residents.
- 11.01.8 Enforcement and remedies.
- 11.01.9 Transitional provisions.
- 11.01.10 Special rules for government entities.
- 11.01.11 No waiver.

**11.02 Special Rules Applicable to Telecommunications
Facilities and Telecommunications Service Providers**

- 11.02.1 Application for a Franchise.
- 11.02.2 Compensation.
- 11.02.3 Additional Franchise requirements.

11.03 Special Rules Applicable to Open Video Systems

- 11.03.1 Application for a Franchise.
- 11.03.2 Compensation.
- 11.03.3 Annual reports.

11.04 Special Rules Applicable to Cable Television Systems

- 11.04.1 Additional definitions.
- 11.04.2 No exclusivity.
- 11.04.3 Relation to 47 U.S.C. §§ 545-546.
- 11.04.4 Applications for grant, renewal, or modification of Franchise.
- 11.04.5 Construction provisions.
- 11.04.6 Operation and reporting provisions.
- 11.04.7 Rate regulation and consumer protection.
- 11.04.8 Franchise fee.

- 11.04.9 Transfers.
- 11.04.10 Connections to cable systems; use of antennae.
- 11.04.11 Discrimination prohibited.
- 11.04.12 Cable service penalties.

11.05 Private Communications Facilities

- 11.05.1 Application for License.
- 11.05.2 Conditions of License.
- 11.05.3 Compensation.

11.06 Miscellaneous

- 11.06.1 Captions.
- 11.06.2 Calculation of time.
- 11.06.3 Severability.
- 11.06.4 Cable customer service standards.
- 11.06.5 Cable customer service standards - relation to other standards.
- 11.06.6 Customer service waiver.

Chapter 11.01 GENERAL

Sections:

- 11.01.1 Purpose.
- 11.01.2 Policy guidelines.
- 11.01.3 Definitions.
 - 11.01.3.1 Generally
 - 11.01.3.2 Affiliate
 - 11.01.3.3 Application Fee
 - 11.01.3.4 Cable Service
 - 11.01.3.5 Cable System
 - 11.01.3.6 City
 - 11.01.3.7 City Manager
 - 11.01.3.8 Communications Facility
 - 11.01.3.9 Communications System
 - 11.01.3.10 Construction, Operation or Repair
 - 11.01.3.11 Franchise
 - 11.01.3.12 Franchise Area
 - 11.01.3.13 Franchisee
 - 11.01.3.14 FCC
 - 11.01.3.15 Gross Revenues
 - 11.01.3.16 License
 - 11.01.3.17 Open Video System, or "OVS"

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the condition that, should the exception ever be eliminated or modified, that Operator or Reseller or Programmer shall be obligated to pay such compensation that would otherwise be required in the absence of the exception.

11.01.5.3 Payments required. Except as otherwise expressly provided in this Title, every cable Operator; every Operator of a Telecommunications System; every Operator of an Open Video System; and every private communications owner must:

11.01.5.3.1 pay an Application Fee for the consideration of an application for issuance, renewal, transfer, or modification of a Franchise or License in an amount that allows the City to recover its actual administrative expenses incurred in receiving, reviewing, processing, considering, denying, or approving the issuance, renewal, transfer, or modification of a Franchise or License. The initial deposit of the Application Fee for the consideration of an application for issuance, renewal, transfer, or modification of a Franchise shall be in the amount of \$5,000, or for a License in the amount of \$1,000, which deposit shall be submitted with the Application. The City may, as costs are incurred, draw upon the deposit to recover its administrative costs, including, but not limited to, the reasonable cost of outside consultants and legal counsel retained by the City related to the City's consideration and processing of a Franchise, Permit or License. The City Manager, at any time, may require the applicant to deposit additional sums if it appears that the initial deposit or subsequent deposits will be exhausted prior to the final action by the City relating to the consideration by the City of an Application for issuance, renewal, transfer, or modification of a Franchise or License. In the event of denial of a Franchise, Permit or License by the City or the refusal of the Applicant to accept the Franchise, Permit or License as approved by the City, the cost to the City for any appeal by the Applicant, including but not limited to, reasonable costs for outside consultants, attorney fees and trial expenses shall be paid by the Applicant, whether or not the Appeal is successful. This requirement to pay the administrative costs is pursuant to the police powers of the City and as authorized by law and any obligation to pay such costs, including attorney fees, shall not be construed to arise by contract or to be incurred to enforce the provisions of a contract. The Applicant will not be entitled to further consideration by the City of its requested action until such time as the additional deposit required by the City Manager has been deposited with the City. In the event the amount of the deposit of an Applicant is in excess of the amount of the administrative expenses of the City related to the action requested, then the Applicant shall be entitled to a return of any such excess amount.

11.01.5.3.2 .Pay all other fees or payments required under this Title or other applicable laws, ordinances or regulations.

11.01.5.3.3 In the event the City determines by resolution or ordinance that an impact assessment shall be assessable, pay such Impact Assessment to reflect, as far as permissible under applicable law, the damage caused or expected to be caused to the rights-of-way by the installation of the facility

11.01.5.4 Payment of costs. Nothing in this section relieves any Communications System Operator of its obligation to bear costs associated with its operations, including but not limited to costs it incurs in moving facilities at the direction of the City.

11.01.5.5 Exceptions. The Franchise fees required under this Title need not be paid:

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obtaining certain permits where such work is necessary to immediately remedy an emergency situation involving an imminent danger to health, safety or property or to temporarily restore communication system services which have been disrupted by storms, earthquakes, riots or other unexpected accidents or phenomenon. Provided, however that the communication system operator undertaking such emergency work shall be required (1) to give notice to the City of the commencement of the emergency work as quickly as practical, (2) to apply for the permits which would otherwise be required for such work by the next business day from the commencement of such work; and (3) to conform any work performed prior to the approval of the required permit and to carry out any other work in the area involved in accordance with the requirements of the permit.

11.01.6.2.3 Operators of communications systems must follow City-established requirements for placement of facilities in Public Rights-of-Way, including the specific location of facilities in the Public Rights-of-Way, and must in any event install facilities in a manner that minimizes interference with the use of the Public Rights-of-Way by others, including others that may be installing communications facilities. The City may require that facilities be installed at a particular time, at a specific place, or in a particular manner as a condition of access to a particular right-of-way; may deny access if an Operator is not willing to comply with the City's requirements; and may remove, or require removal of, any facility that is not installed in compliance with the requirements established by the City, or which is installed without prior City approval of the time, place, or manner of installation and charge the Operator of the facility for all the costs associated with removal; and may require a Person using the rights-of-way to cooperate with others to minimize adverse impacts on the rights-of-way through joint trenching, joint use of facilities and other arrangements.

11.01.6.2.4 Upon order of the City Manager, all work which does not comply with the permit, the approved plans or specifications for the work, or the requirements of this Title or other applicable law shall be removed.

11.01.6.2.5 Unless otherwise agreed or provided in a franchise, license or permit a communication systems operator shall be required to reimburse and hold harmless the City for any cost or expense reasonably incurred by the City in the planning, construction, installing, altering or implementing any public work as a result of the construction or the presence in the public right-of-way of the facility of such communication system operator.

11.01.6.2.6 Additional Conduit for use by City and Others. To minimize disruption of public passage or infrastructure, to forestall or relieve exhaustion of rights-of-way capacity, to protect environmentally sensitive areas, to prevent additional cost to future users of the public rights-of-way by reason of the placement of communication facilities or to meet other foreseeable needs of the City the City may require as a condition of issuing any right-of-way permit for installation of communication facilities that the Franchisee, Licensee or Permittee, provide conduit or conduit capacity and related access facilities in excess of its own present and reasonably foreseeable requirements for the purpose of accommodating the City and/or other franchisees and licensees at no cost to the City and under terms and conditions as may be agreed to or in any event at a maximum cost not in excess of that required by law. If the Franchisee, Licensee or Permittee does not provide such additional facilities under an agreement and

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at a cost satisfactory to the City then the Franchisee, Licensee, or Permittee may be obligated to remove, modify or relocate its Facilities as necessary as determined by the City Engineer to allow any future user to locate its facilities in the public right-of-way at no greater cost than would have been incurred by such future user if the facilities of such Franchisee, Licensee or Permittee had not been placed in the public right-of-way.

11.01.6.2.7 Unless otherwise specified in a Franchise, all facilities shall be constructed, installed, and located in accordance with the following terms and conditions:

11.01.6.2.7.1 Communication system facilities shall be installed and maintained underground (including facilities such as drops which cross private property) and in full compliance with any and all ordinances and regulations of the City now or hereafter in effect except that (1) those portions of wireless communication facilities which must be above ground in order to function for their intended purpose may be located above ground; and (2) those portions of other communication facilities (wireline facilities) which are allowed to be placed above ground under other provisions of the Fife Municipal Code, City Ordinances or regulations, may be located above ground if, in addition to complying with any other requirement imposed, the communications system operator agrees in a form satisfactory to the City to place any such facilities underground at the communication system operator's cost at any time requested by the City in accordance with any regulatory ordinances and underground policies which the City may adopt.

11.01.6.2.7.2 No new poles or extenders on poles to increase capacity shall be allowed in the public rights-of-way and all new overhead facilities of any nature are prohibited unless specifically allowed under this chapter or other applicable provisions of the Fife Municipal Code.

11.01.6.2.7.3 The specific location within the right-of-way and the method of installing facilities underground or overhead will be subject to approval by the City Engineer. Cutting of pavement in the public right-of-way shall be prohibited where the City Engineer approves locating underground facilities in the unimproved portions of the right-of-way or in the sidewalk areas or requires alternative methods for undergrounding not requiring trenching or the cutting of pavement.

11.01.6.2.7.4 Cutting of pavement shall be prohibited in any event in a newly constructed or reconstructed street for a period of five (5) years from the paving of such street or in a street where a trench was previously available for a period of three (3) years from the date the trench was available. The City may require as a condition to the occupancy of the rights-of-way that communication facilities be located within existing underground ducts or conduits wherever the capacity exists. Provided, however, the Public Works Director may in his or her discretion permit pot-holing (subject to conditions to alleviate the harmful effects) where conduit is to be placed underground by means of directional boring and the person seeking permission has provided evidence satisfactory to the Public Works Director that (1) such pot-holing is necessary to avoid interference with existing utilities; (2) such pot-holing is the only reasonable alternative available to locate existing utilities and (3) such pot-holing will result in little or no visual or other detrimental impact to the street.

11.01.6.2.7.5 Undergrounding of Existing Facilities. Unless prohibited by law or unless provided otherwise under a Franchise, License or Permit,

establish forms for submission of applications and other information, and to take all other actions necessary or appropriate to the administration of this Title or any Franchise. Franchises may only be denied, issued or revoked by action of the City Council.

11.01.8.2 Applications for Franchises and Licenses.

11.01.8.2.1 An application must be filed for an initial Franchise or License, for a transfer, or for renewal of a Franchise or License. Each entity that is required to hold a Franchise or License must submit an application therefor to the City Manager in accordance with the requirements of this Title. To be accepted for filing, an original and three (3) copies of a complete application for a Franchise, and an original and three (3) copies of a complete application for a License must be submitted, showing the routes the applicant proposed to use. All applications shall be available for public inspection. All applications shall include the names and addresses of persons authorized to act on behalf of the applicant with respect to the application.

11.01.8.2.2 An application may be filed by any Person on that Person's own initiative or in response to a request for proposals. The City Manager is authorized to issue requests for proposals from time to time.

11.01.8.2.3 Every application shall be accompanied by an initial deposit in the amounts of \$5,000 for Franchises and \$1,000 for Licenses.

11.01.8.2.4 In addition, an applicant that is awarded a Franchise or License, shall pay to the City a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting of a Franchise or License. Such payment shall be made by delivery of payment to the City within 30 days after the City furnishes the Franchisee or Licensee with a written statement of such expenses.

11.01.8.2.5 No Franchise shall become effective until all required fees and costs are paid.

11.01.8.2.6 Notwithstanding any other provision of this Title, pledges in trust or mortgages of the assets of a Franchised or Licensed Communications System to secure the Construction, Operation, or Repair of the system may be made without application and without the City's prior consent; except that no such arrangement may be made if it would in any respect under any condition prevent the Communications System Operator or any successor from complying with the Franchise or License and applicable law, nor may any such arrangement permit a third party to succeed to the interest of the Operator, or to own or control the Communications System, without the prior consent of the City. Any mortgage, pledge or lease shall be subject to and subordinate to the rights of the City under any Franchise, this Title, or other applicable law.

11.01.8.2.7 The City Council may, in its sole discretion which is hereby reserved, (1) approve or disapprove a License; and (2) require such terms and conditions in the License Agreement as deemed in the best interest of the City. The City Manager or City Council may request such additional information from an Applicant for a License as deemed appropriate in order to proceed with consideration of the application.

11.01.8.3 Minimum contents of every Franchise or License. In addition to satisfying the other applicable requirements of this Chapter, every Franchise or License for a Communications System shall contain the following provisions:

11.01.8.3.1 The Franchise or License shall provide that neither the granting of any Franchise or License, or any provision thereof, shall constitute a waiver

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or bar to the exercise of any governmental right or power, police power, or regulatory power of the City as may exist at the time the Franchise or License is issued or thereafter be obtained.

11.01.8.3.2 The Franchise or License shall only authorize occupancy of the right-of-way to provide the services and for the purposes described in the Franchise or License.

11.01.8.3.3 A Franchise or License shall be a privilege that is held in the public trust and personal to the original Franchisee. The Franchise or License shall ensure that no transfer of the Franchise or License may occur, directly or indirectly, without the prior consent of the City; except as contemplated by Section 11.01.8.2.6 or as otherwise expressly provided in this Title.

11.01.8.3.4 Reserved.

11.01.8.3.5 The Franchise or License shall contain appropriate provisions for enforcement, compensation, and protection of the public, consistent with the other provisions of this Title.

11.01.8.3.6 The Franchise or License shall be for a specified term, set forth in the Franchise or License. No Franchise issued under this Title shall be for a term of longer than ten years, unless the Council determines that a longer period would be in the City's interest. No License issued under this Title shall be for a term of longer than five years.

11.01.8.3.7 Such other terms as are required by the City.

11.01.8.3.8 License shall be discretionary.

11.01.8.4 Penalties. Any person found to have occupied or carried out activities in the public rights-of-way without first having obtained or having in effect a valid Franchise, License, or permit as required by this Title shall be guilty of a misdemeanor and shall be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding 90 days or by both such fine and imprisonment. Each day that any such occupancy or activity shall continue in violation of this Title shall constitute a separate offense.

11.01.8.5 Revocation, reduction of term, or forfeiture of Franchise or License.

11.01.8.5.1 Licenses shall be revocable at will.

11.01.8.5.2 Where, after notice and providing the franchisee an opportunity to be heard (if such opportunity is timely requested by a franchisee), the City finds that the facility is being maintained or operated in violation of this title or in substantial violation of the terms of the franchise, the City may make an appropriate reduction in the remaining term of the franchise or revoke the franchise. The City Manager is authorized to establish and conduct a proceeding that complies with the requirements of this Section 11.01.8.5.2, and to issue a decision which will become final unless appealed to the City Council within thirty (30) days of the decision of the City Manager. Notwithstanding the foregoing, the franchise may only be revoked if the franchisee (1) was given notice of the default; and (2) 30 days to cure the default; and (3) the franchisee failed to cure the default, or to propose a schedule for curing the default acceptable to the City where it is impossible to cure the default in 30 days. The required notice may be given before the City conducts the proceeding required by this paragraph. No opportunity to cure is allowed for fraud, which shall be deemed incurable.

application or intentionally withheld information that the applicant lawfully is required to provide. An application for a Franchise area may be denied if the Franchisee has no plans for constructing a system within the entire area for which the Franchise is sought.

11.02.2 Compensation.

11.02.2.1 Rights-of-way fee. Subject only to the exceptions set out in Sections 11.01.4.3, 11.01.5.2, and 11.01.5.5 of this Title, every Operator of a telecommunications facility must pay compensation to the City equal to 5 percent of Gross Revenues, or such other amount as may be provided in a Franchise.

11.02.2.2 Gross Revenues defined. Gross Revenues, for purposes of this Chapter 11.02, includes all revenue derived directly or indirectly by the Operator; or derived directly or indirectly by their Affiliates, subsidiaries, parent companies, and any Person in whom the Operator has a financial interest, or revenues received by the Operator from a Person with whom Operator has a revenue-producing agreement, from the provision of Telecommunications Services via the Telecommunications System, which provision shall be interpreted to include all services and ancillary equipment; *provided, however*, that this term shall not include taxes imposed directly upon any subscriber or user by the Federal, State, county, or other governmental unit and required to be collected by the Operator; *provided further*, that a Franchisee may deduct from its Gross Revenues those revenues received from a lessee that holds a Franchise or License under this Title, if that lessee submits a certificate to the telecommunications Operator stating that it has paid the fees it owes the City for the applicable reporting period. Copies of the certificate must be provided to the City.

11.02.2.3 Public record. The compensation paid by each provider for use of Public Rights-of-Way shall be a matter of public record and available for public inspection.

11.02.3 Additional Franchise requirements.

11.02.3.1 Reservation of authority. In addition to satisfying the requirement of Chapter 11.01, every Franchise shall specifically reserve the right of the City to the full extent of its jurisdiction or authority to require a Franchisee to construct facilities or to make payments that may be required to comply with any universal service plan the City may lawfully adopt; and to comply with any lawful requirements to ensure continued quality of Telecommunications Services, safeguard the right of consumers, or otherwise protect the public safety and welfare.

11.02.3.2 Provision of facilities and equipment. The City may accept or require an Operator of a Telecommunications System to provide facilities or equipment for use by the City, the schools or any other governmental entity in the City as a condition of the License grant, except as prohibited by law; or may require License holders to share in the costs associated with provisions of such facilities and by other Communications System operators.

11.02.3.3 Annual reports. No later than 90 days after the end of its fiscal year, all operators shall submit a written report that shall contain such information as may be required from time to time by the City, and at least the following, unless the City waives the requirement:

11.02.3.3.1 a summary of the previous year's activities in the development of the system, including descriptions of services begun or discontinued, the number of subscribers gained or lost for each category of service;

A BILL FOR AN ORDINANCE

ORDINANCE NO: _____

SERIES OF 2001

INTRODUCED BY: _____

**AN ORDINANCE TO REPEAL AND REENACT CHAPTER 12.04 OF
THE GREENWOOD VILLAGE CODE, ENTITLED PUBLIC RIGHT-OF-
WAY PERMITS**

WHEREAS, obstructions and excavations in public rights-of-way disrupt and interfere with public use of the rights-of-way;

WHEREAS, obstructions and excavations in public rights-of-way result in loss of parking and loss of business to merchants and others whose places of business are in the vicinity of such obstructions and excavations;

WHEREAS, to provide for the health, safety and welfare of the City and its residents, it is desirable to adopt policies and regulations which will enable the City to gain greater control over the disruption and interference with the public use of public rights-of-way;

WHEREAS, significant public funds have been invested to acquire, build, maintain and repair the streets within the City, and cuts and excavations in the streets reduce the useful life of the pavement;

WHEREAS, significant public funds have been invested to place and maintain landscaping within public rights-of-way in the City, and cuts and excavations in the public rights-of-way cause damage to, and increase the costs of maintaining that landscaping;

WHEREAS, at the present time, the City does not have a detailed map or database indicating the location, nature, or extent of the entire system of underground utility and telecommunications facilities;

WHEREAS, private and commercial operators of motor vehicles pay added gasoline taxes to compensate for the damage their vehicles cause to City streets, and part of these taxes are used by the federal government (the federal highway "trust fund") for construction and maintenance of interstate and federal highways, and the State of Colorado annually transfers revenue from gasoline taxes to the City for street maintenance, while public and commercial utilities which degrade the streets do not adequately pay for the long-term damage done to the roadway surfaces; and

WHEREAS, at the present time there is no formal mechanism nor legal requirement that public and commercial utilities, cable operators and telecommunications providers coordinate excavation or construction in public rights-of-way within the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GREENWOOD VILLAGE, COLORADO, ORDAINS:

O. "Work" means any labor performed within a public right-of-way and/or any use or storage of equipment or materials within a public right-of-way, including but not limited to: excavation; construction of streets, fixtures, improvements, sidewalks, driveway openings, bus shelters, bus loading pads, street lights, and traffic signal devices; construction, maintenance, and repair of all underground facilities such as pipes, conduit, ducts, tunnels, manholes, vaults, cable, wire, or any other similar structure; maintenance of facilities; and installation of overhead poles used for any purpose.

12.04.030 Police power.

A. A permittee's rights hereunder shall at all times be subject to the police power of the City, which includes the power to adopt and enforce ordinances, including amendments to this Chapter, necessary for the safety, health, and welfare of the public.

B. The City reserves the right to exercise its police power, notwithstanding anything in this Chapter or any permit to the contrary. Any conflict between the provisions of any permit and any other present or future lawful exercise of the City's police power shall be resolved in favor of the latter.

12.04.040 Permit required.

A. No person except an employee or official of the City or a person exempted by contract with the City shall undertake or permit to be undertaken any work in a public right-of-way without first obtaining a permit from the City as set forth in this Chapter. Copies of the permit and associated documents shall be maintained on the job site and available for inspection upon request by any officer or employee of the City.

B. No permittee shall perform work in an area larger or at a location different, or for a longer period of time than that specified in the permit. If, after work is commenced under an approved permit, it becomes necessary to perform work in a larger or different area or for a longer period of time than what the permit specifies, the permittee shall notify the City immediately and within twenty-four (24) hours shall file a supplementary application for the additional work.

C. Permits shall not be transferable or assignable without the prior written approval of the City.

D. Any person conducting any work within the public right-of-way without having first obtained the required permit(s) shall immediately cease all activity (exclusive of actions required to restore the area in accordance with City requirements) and obtain a permit before work may be resumed.

D. Before beginning excavation in any public right-of-way, a permittee shall contact the Utility Notification Center of Colorado (UNCC) and, to the extent required by C.R.S. § 9-1.5-102 et seq., make inquiries of all ditch companies, utility companies, districts, local governments, and all other agencies that might have facilities in the area of work to determine possible conflicts. The permittee shall contact the UNCC and request field locates of all facilities in the area pursuant to UNCC requirements. Field locates shall be marked prior to commencing work.

12.04.170. Minimal interference with other property.

A. Work in the public right-of-way or on or near other public or private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Facilities shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any City property, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the public rights-of-way by the City or its authority.

B. Facilities shall be located, erected and maintained so as not to endanger or interfere with the lives of persons, or to interfere with new improvements the City may deem proper.

C. Facilities shall not unnecessarily hinder or obstruct the free use of the public rights-of-way or other public property, shall not interfere with the travel and use of the public rights-of-way by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic.

12.04.180 Underground construction and use of poles.

A. When required by City ordinance, resolution, regulation or rule or applicable State or federal law, facilities shall be placed underground at no cost to the City. Placing facilities underground shall not preclude the use of ground-mounted appurtenances.

B. Where all existing facilities in a particular location are installed underground at the time of construction, or where all such facilities are subsequently placed underground, all of a permittee's facilities in that location shall also be placed underground at no expense to the City unless funding is generally available for such relocation to all users of the public rights-of-way.

C. In areas where existing facilities are above-ground, the permittee may install above-ground facilities.

D. For above-ground facilities, a permittee shall utilize existing poles and conduit wherever possible.

c. Whether duct or conduit is reasonably available from another user of the public right-of-way.

d. Whether the proposed work involves joint trenching or joint use, and the number of users to share in the trenching or use.

e. Whether the proposed work is to be by horizontal boring, tunneling or open trenching.

E. Exemptions for emergency operations. Emergency maintenance operations in restricted rights-of-way shall be limited to circumstances involving the preservation of life or property, or the restoration of customer service. Any person commencing operations under this Subsection shall submit detailed engineering plans, construction methods and remediation plans no later than one working day after initiating the emergency operation.

12.04.220 Relocation of facilities.

A. If at any time the City requests a permittee to relocate its facilities in order to allow the City to make any public use of rights-of-way, or if at any time it shall become necessary because of a change in the grade or for any other purpose by reason of the improving, repairing, constructing, or maintaining of any public rights-of-way, or by reason of traffic conditions, public safety or by reason of installation of any type of structure of public improvement the City or other public agency or special district, and any general program for the undergrounding of such facilities, to relocate facilities within or adjacent to public rights-of-way in any manner, either temporarily or permanently, the City shall notify the affected permittee, at least ninety (90) days in advance, except in the case of emergencies, of the City's intention to perform or have such work performed. The permittee shall thereupon, at no cost to the City, accomplish the necessary relocation within a reasonable time from the date of the notification, but in no event later than three (3) working days prior to the date the City has notified the permittee that it intends to commence its work or immediately in the case of emergencies.

B. Should the permittee fail to perform the relocation, the City may perform such relocation at the permittee's expense and the permittee shall reimburse the City as provided in Section 12.04.250.

C. Following relocation, the permittee shall, at the permittee's own expense, restore all affected property to, at a minimum, the condition which existed prior to the work. A permittee may request additional time to complete a relocation project, and the City may grant an extension if, in his or her sole discretion, the extension will not adversely affect the City's project or the public use of the affected public rights-of-way.

12.04.230 Abandonment and removal of facilities.

A. Notification. A permittee that intends to discontinue use of any facility within the public right-of-way shall notify the City in writing of the intent to discontinue use. Such notice shall describe the facilities for which the use is to be discontinued, a date of discontinuance of use, which date shall not be less than thirty (30) days from the date such notice is submitted to the City, and the method of removal and restoration.

B. The permittee may not remove, destroy or permanently disable any such facilities during said thirty (30) day period without written approval of the City. After thirty (30) days from the date of such notice, the permittee shall remove and dispose of such facilities as set forth in the notice, as the same may be modified by the City, and shall complete such removal and disposal within six (6) months, unless additional time is requested from and approved by the City.

C. Abandonment of facilities in place. Upon prior written approval of the City, a permittee may either:

1. Abandon the facilities in place, and immediately convey full title and ownership of such abandoned facilities to the City. The only consideration for the conveyance shall be the City's permission to abandon the facilities in place. The permittee shall be responsible for all obligations and liabilities until the conveyance to the City is completed.

2. Abandon the facilities in place, but retain ownership and responsibility for all liabilities associated therewith.

12.04.240 Emergency procedures.

A. Any person maintaining facilities in the public right-of-way may proceed with repairs upon existing facilities without a permit when emergency circumstances demand that the work be done immediately. The person doing the work shall apply to the City for a permit on the first working day after such work has commenced. All emergency work shall require prior telephone notification to the City Police Department and the appropriate fire protection agency.

B. If any damage occurs to an underground facility or its protective covering, the contractor shall notify the facility's owner promptly. When the facility's owner receives a damage notice, the facility's owner shall promptly dispatch personnel to the damage area to investigate. If the damage results in the escape of any inflammable, toxic, or corrosive gas or liquid or endangers life, health, or property, the contractor responsible shall immediately notify the facility's owner and 911 and take immediate action to protect the public and nearby properties.

12.04.270 Penalties.

A. If any person, firm or corporation is found guilty of or pleads guilty to a violation of any of the provisions of this Chapter, they shall be punished as provided in Section of this Code. Each and every day or portion thereof during which a violation is committed, continues or is permitted shall be deemed a separate offense.

B. In addition to or in lieu of the penalty set forth in Subsection A, the City may impose the following monetary penalties:

1. For any occupancy of a travel lane or any portion thereof beyond the time periods or days set forth in the traffic control plan approved by the City:

a. In arterial and collector streets (as defined in the City of Greenwood Village Transportation Plan) during the hours of 6:30 a.m. through 8:30 a.m. and 3:30 p.m. through 6:00 p.m., Monday through Friday: one hundred dollars (\$100) for each fifteen minutes, or portion thereof, for a maximum of three thousand dollars (\$3,000) per day.

b. In arterial and collector streets during any time other than the times specified in Subsection a., or in local streets at any time: fifty dollars (\$50) for each fifteen minutes, or portion thereof, for a maximum of fifteen hundred dollars (\$1,500) per day.

2. For commencing work without a valid permit: five hundred dollars (\$500), plus twice the applicable permit fee.

3. For any other violation of a permit: two hundred fifty dollars (\$250) per violation, with no maximum amount.

C. The penalties set forth in this Section shall not be the City's exclusive remedy for violations of this Chapter, and shall not preclude the City from bringing a civil action to enforce any provision of a public right-of-way permit, or to collect damages or recover costs associated with any use of the public rights-of-way. Furthermore, the exercise of one penalty shall not preclude the City from exercising any other penalty.

INTRODUCED AND APPROVED ON FIRST READING ON THE ____ DAY OF _____, 2001, AND ORDERED PUBLISHED IN THE VILLAGER.

David W. Phifer, Mayor

- TV. "**Complaint**" means any oral, written or electronic inquiry, allegation, or assertion made by a Person regarding Cable Service or Cable System operations.
- UW. "**Converter**" means an electronic device that converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber and, through the use of an appropriate Channel selector, permits a Cable Subscriber to view all authorized Cable Subscriber signals delivered at designated converter dial locations. Converters include all devices furnished to the Subscriber and owned by the ~~Cable Provider~~ Franchisee.
- VX. "**Direct Incremental Costs**" means the costs actually incurred by a Cable ~~Provider Franchisee~~ in meeting an obligation under its Franchise which the ~~Provider Franchisee~~ would not otherwise have incurred in order to either operate and conduct the business of its Cable System or meet another obligation of the Franchise.
- WY. "**Drop**" means the cable or cables that connect the ground block on the Cable Subscriber's property to the nearest feasible point on the Cable System in order to receive Cable Service.
- XZ. "**Facilities**" means any portion of a System located in, along, over, upon, under, or through the Rights-of-Way.
- YAA. "**Franchise**" means a Cable Franchise or a Communications Franchise as defined herein or any other agreement or license granted by the City authorizing use of the Rights-of-Way for any Cable Service or Communication Service.
- BB. "**Franchisee**" means a Communications Franchisee or a Cable Franchisee or any Person required to have a Communications Franchise or Cable Service Franchise.
- ZCC. "**Franchise Area**" unless otherwise specified in the applicable Franchise, means the entire geographic area within the City as it is now constituted or may in the future be constituted.
- AA. "~~Franchisee~~" means ~~the party subject to a Cable Franchise or a Communications Franchise, or its successor, assigns, or transferee.~~
- BB. "~~Grantee~~" means ~~a Person who is granted a Cable Franchise and that Person's agents, employees, lawful successors, transferees, or assignees.~~
- CC-DD. "**Gross Receipts**" means all revenues received directly or indirectly by a Communications Franchisee or its Affiliates for Communications Services originating, terminating or otherwise rendered

wholly within the City and all revenue derived from the use of the Facilities. Except to the extent as may be prohibited by law, such "Gross Receipts" shall specifically include, but shall not be limited to, all revenue of the Communications Franchisee derived from the following:

1. Recurring local exchange service revenues for business and residence which include basic telephone exchange service, Touch Tone, Custom Calling Services and measured local calls;
2. Recurring local exchange service revenues for public, semi-public and private coin;
3. Local directory assistance (411);
4. Line status verification/busy interrupt;
5. Local operator assistance;
6. Information delivery service;
7. Cellular and other wireless communication services revenue; provided that such revenues derive from a system having antennae or other parts of the mobile system are physically located within the Rights-of-Way and the City is legally authorized to collect such fee;
8. Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate telephone bills;
9. Revenue received by the Communications Franchisee from Reseller Service Providers (except for revenues from Reseller Service Providers that have a separate enforceable Franchise with the City providing for payment of Gross Receipts of that Reseller Service Provider);
10. ~~Internet access charges or services and including all high speed and traditional subscriber line charges or services~~ Revenue from Internet Access Service (and including Cable Internet Service, unless such service revenues are validly required to be included and are collected as Gross Revenues in a Cable Franchise between Franchisee and the City);
11. Revenue from rent, physical use, collocation, or sale of the Facilities, network elements, or a portion thereof for any purpose;
12. Late charges or interest received on gross receipts;